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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,919	10/14/2003	John Brandon Dobbs	1924.005	3550

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DUNLAP, CODDING & ROGERS P.C.  
PO BOX 16370  
OKLAHOMA CITY, OK 73113

EXAMINER

PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/684,919	Applicant(s) DOBBS ET AL.	
	Examiner David J Parsley	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10-1-04</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **Detailed Action**

### *Amendment*

1. This office action is in response to applicant's amendment dated 10-1-04 and this action is final.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 1 and 4, the limitation of the scent dispersing from the inner layer without manipulation of the container is not supported in applicant's disclosure in this application or parent application 10/196,901. Applicant's disclosure only states that the scent is imparted to the object in the container and does not state if any manipulation or no manipulation is needed to carry this out. Further, the limitation in claims 1 and 4 of resealing the container to encapsulate

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the scent after removing the scented object from the container is not supported in applicant's disclosure or the disclosure of parent application 10/196,901.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,707,696 to Boxler in view of U.S. Patent No. 5,297,354 to McGriff.

Referring to claim 1, Boxler discloses a method of storing and imparting scent to an object comprising, providing a container – at 10,12, having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound – see for example columns 2-3, such that the inner layer has a scent that disperses from the inner layer without manipulation of the container, opening the container, positioning the object in the container, sealing the container to encapsulate the object in the container and storing the object in the container for a period of time sufficient to permit the scent of the inner layer to disperse from the inner layer without manipulation of the container and to be imparted to the object while the outer layer serves as a barrier to prevent surrounding objects from being contaminated with the scent and unsealing the container and removing the scented object from the container – see for example columns 2-3.

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Boxler does not disclose unsealing a sealed container then resealing and unsealing again before resealing to encapsulate the scent. McGriff does disclose unsealing a sealed container – at 10-18, then resealing and unsealing again before resealing to encapsulate the scent – see for example figures 1-4 and columns 2-4, where the bag is unsealed after being in the position shown in figure 4 and then the object – at 12 is inserted into the bag as seen in figure 1 and then the bag is sealed as seen in figure 3 and then the bag is opened to remove the object – 12 for use and then the bag is placed back into the position seen in figure 4 when user is done using object – 12 or another object similar to – 12 can be added and the process begins again.

Referring to claims 2 and 5, Boxler as modified by McGriff further discloses the inner and outer layer is fabricated of a flexible material – see for example columns 2-3 of Boxler.

Referring to claim 4, Boxler discloses a method of storing and imparting scent to an object comprising, providing a container – at 10,12, having an outer layer fabricated of a moisture and gas barrier material and an inner layer comprising a film extruded from a mixture of a polymeric material and a scented compound – see for example columns 2-3, such that the inner layer has a scent that disperses from the inner layer without manipulation of the container, opening the container, positioning the object in the container, sealing the container to encapsulate the object in the container and storing the object in the container for a period of time sufficient to permit the scent of the inner layer to disperse from the inner layer without manipulation of the container and to be imparted to the object while the outer layer serves as a barrier to prevent surrounding objects from being contaminated with the scent – see for example columns 2-3. Boxler does not disclose the container uses a fish attractant scent to impart a fish attractant scent to a fishing bait. McGriff does disclose a container – at 14, imparting a fish

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attractant scent – at 50, to a fishing bait – at 12 – see figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Boxler and add the scent being a fish attractant to be imparted to a fishing bait of McGriff, so as to allow for one to increase the effectiveness of fishing by making a fishing bait more attractive to fish. Boxler further does not disclose unsealing a sealed container then resealing and unsealing again before resealing to encapsulate the scent. McGriff does disclose unsealing a sealed container – at 10-18, then resealing and unsealing again before resealing to encapsulate the scent – see for example figures 1-4 and columns 2-4, where the bag is unsealed after being in the position shown in figure 4 and then the object – at 12 is inserted into the bag as seen in figure 1 and then the bag is sealed as seen in figure 3 and then the bag is opened to remove the object – 12 for use and then the bag is placed back into the position seen in figure 4 when user is done using object – 12 or another object similar to – 12 can be added and the process begins again.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boxler as modified by McGriff as applied to claims 1 and 4 above, and further in view of U.S. Patent No. 5,632,113 to Raymond et al.

Referring to claims 3 and 6, Boxler as modified by McGriff does not disclose the container is secured to a ring binder carrying case. Raymond et al. does disclose the outer layer is provided with at least one hole – (at 4,5) to permit the container – 13 to be secured to a ring binder carrying case – 1 and 6 – see for example figures 6-7. Therefore it would have been obvious to one of ordinary skill in the art to take the method of Boxler as modified by McGriff and add the outer layer with a hole to allow the container to be secured to a ring binder carrying

case of Raymond et al., so as to make the device more user friendly in that it can be easily transported and supported.

### ***Response to Arguments***

4. Regarding the 35 U.S.C. 112 1<sup>st</sup> paragraph rejections, applicant argues that the limitation of storing the object in the container implies that there is no manipulation of the object in the container since the object in the container is not being used when it is in the container. However, applicant does not specifically define the term “store” or “storing”. Further, Merriam-Webster’s Collegiate Dictionary 10<sup>th</sup> edition, defines the term “store” is defined as to place or leave in a location for preservation or latter use or disposal, and this definition does not imply that the object being stored has to be at rest or is not manipulated. A stored object can be placed in a car or a backpack etc. and when the movement of the car or the person carrying the backpack can cause the object to move or be manipulated while it is being stored. Therefore, it is the examiner’s position that the term “store” does not imply non-manipulation of the object being stored.

Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

Regarding claims 4-5, applicant argues that the Boxler reference US 5707696 does not teach a barrier layer however a barrier layer is not what is claimed in the limitations of the claimed invention. As seen in claim 4, applicant claims the container has an outer layer fabricated of a moisture and gas barrier material. The material of the outer layer is a polyolefin –

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see column 3 lines 1-21 which is a gas and moisture barrier material. Therefore the Boxler reference discloses applicant's claimed moisture and gas barrier material. Further, applicant argues that the Boxler reference does not contaminate the object inside the scented container and therefore no scent is transferred from the container to the object in the container. As seen in column 1 lines 59-67, the Boxler reference discloses that not contaminating the object in the container refers to not putting the scented composition directly on the object. Therefore the device of Boxler transfers the scent to the object in the container through the plastic container thus not harming/contaminating the object in the container. It is inherent that the scented container imparts its scent to the object inside the container since they are in direct contact with one another.

Regarding claim 6, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO




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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David Parsley  
Patent Examiner  
Art Unit 3643

  
**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

12/14/04